

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL PRODUCTS, INC.,

Plaintiff,

v.

GAMBER-JOHNSON LLC,

Defendants.

Civil Case No. CV08-0049-JLR

**DECLARATION OF JEFFREY D.
CARNEVALI IN SUPPORT OF
NPI'S MOTION FOR EXPEDITED
DISCOVERY**

Noted on Motion Calendar:
Friday, May 2, 2008

ORAL ARGUMENT REQUESTED

I, Jeffrey D. Carnevali, hereby declare as follows:

1. I am the founder and president of Plaintiff National Products, Inc. ("NPI").
My company is located at 1205 South Orr Street, Seattle, WA 98108.

2. In 1992 I invented a mounting device used most commonly in cars, planes,
and boats. This invention evolved into an entire line of mounting systems known as the
"RAM mount" system. RAM mounts were the first of their kind to use a double-socket arm
assembly with a clamp and rubber balls. The RAM mount was a very successful product,
beginning with its release in 1994.

3. Gamber-Johnson is no stranger to NPI. Gamber-Johnson's mounting
systems are directly competitive with the RAM mounting systems and the two companies

1 compete for business from the same end-users, namely, utility companies, law enforcement
2 agencies, companies having mobile sales forces, to name a few. Both companies' mounting
3 systems are primarily sold through distributors who, in turn, sell to the end-users.

4 4. On December 21, 2004, NPI filed suit against Gamber-Johnson in the United
5 States District Court for the Western District of Washington at Seattle for patent and trade
6 dress infringement in connection with the RAM hourglass-shaped double-socket arm
7 assembly with a single clamp and rubber balls. After lengthy discovery and considerable
8 motion practice the case was ultimately terminated with a consent judgment in our favor and
9 Gamber admitting to infringement of our U.S. Patent No. 5,845,885. More recently, NPI
10 filed another patent infringement suit against Gamber-Johnson, which is currently pending
11 before the Honorable Richard A. Jones, Case No. C07-1985-RAJ.

12 5. Last summer, I personally became aware of Gamber-Johnson's infomercial,
13 "The Mounting Evidence." I learned of it from one of my employees who was informed by
14 one of our dealers. I discussed it with several of my colleagues at the company and we were
15 not overly concerned about it because we felt that the claims made in the infomercial were
16 so false, distorted and overstated that distributors and vehicle mounting systems end-users
17 would see right through it, recognizing that it was not an independent objective product
18 comparison supported by scientifically conducted studies. Consequently, NPI took no
19 action at that time to stop the dissemination of The Mounting Evidence infomercial.

20 6. On December 4, 2007, I received a telephone call from Winston Douglas
21 Mayer, the founder of Mobile Desk SVP, Inc. ("Mobile Desk"), a company engaged in the
22 design, manufacture, distribution and sale of mounting systems under the MOBILE DESK
23 brand. For approximately six years NPI has been selling various RAM mounting system
24 components such as laptop trays, arms, and power docking stations to Mobile Desk, who

1 then incorporates those components into its own MOBILE DESK brand mounting systems.
2 NPI sells both standard RAM components to Mobile Desk as well as customized
3 components that are often jointly developed and engineered.

4 7. During that conversation Mr. Mayer told me that he had only minutes before
5 met with Joshua Simes of Comcast, the country's largest cable television provider,
6 concerning certain vehicle mounting systems that Mobile Desk had several months earlier
7 offered to sell Comcast and for which he provided pricing. Based on Mobile Desk's request
8 for a proposal, Comcast formulated a budget for the purchase of vehicle mounting systems
9 using Mobile Desk's pricing. However, at the meeting Mr. Simes informed Mr. Mayer that
10 no orders would be placed at this time because certain safety issues had been raised by
11 Michael Schiller, Comcast's Regional Safety Director, about the Mobile Desk mounts.
12 Specifically, Mr. Simes told Mr. Mayer that Mr. Schiller had watched the Gamber-Johnson
13 infomercial, The Mounting Evidence, which Mr. Simes then viewed with Mr. Mayer. As a
14 result, no order was placed by Comcast with Mobile Desk and Mr. Mayer was required to
15 re-engineer certain aspects of the MOBILE DESK vehicle mounting system including
16 certain of the RAM components. Notwithstanding several design changes to the Mobile
17 Desk vehicle mounting system Comcast has yet to place an order and, instead has thus far
18 only ordered Gamber-Johnson vehicle mounting systems.

19 8. When I learned of this it became clear to me that I did not appreciate the true
20 impact of Gamber-Johnson's The Mounting Evidence infomercial. Sophisticated
21 purchasers, such as Comcast, actually believe the false and misleading statements contained
22 in the infomercial with consumers believing our product to be unsafe and thereby causing
23 NPI to lose sales. If Comcast believed these false and misleading statements I would have
24 to believe that other sophisticated customers would as well. In fact, Gamber-Johnson's

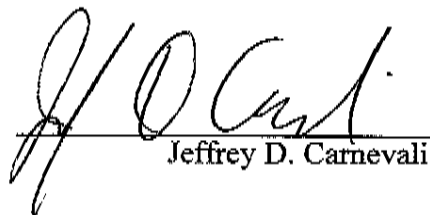
1 public relations agency, Thomas Marks & Associates, the company that created The
2 Mounting Evidence infomercial, touts that “the nationwide reseller network of Gamber-
3 Johnson has indicated this selling device has accounted for a fifteen percent increase in
4 closing ratios.” *See* Exh. 4 of Amended Complaint. Consequently, I believe that consumer
5 confusion is both real and substantial.

6 9. After speaking with Mr. Mayer I immediately contacted my counsel to see
7 what, if anything, could be done. On January 14, 2008 NPI filed this action for false
8 advertising. Shortly thereafter counsel for the parties engaged in settlement discussions.
9 Although the case did not settle it was NPI’s understanding based on those discussions that
10 Gamber-Johnson would stop distributing the DVD version of the Mounting Evidence
11 infomercial at trade shows and remove it from its website. However, in mid-March NPI
12 learned that Gamber-Johnson was still distributing the DVD version of The Mounting
13 Evidence infomercial when its representatives saw it being distributed at the General
14 Dynamics/Itronix Trade Show.

15 10. On or about March 17, 2008, I then instructed my counsel to contact
16 Gamber-Johnson’s counsel to request that it agree to discontinue the distribution of the
17 DVD and remove the infomercial from its website or else NPI would move for preliminary
18 injunction. Those discussions were unsuccessful. Consequently, I submit this declaration in
19 support of NPI’s motion for expedited discovery. I believe discovery will show that
20 Gamber-Johnson’s The Mounting Evidence infomercial is biased, false and misleading and
21 not supported by sound scientific studies. Upon the completion of discovery NPI intends to
22 move for preliminary injunctive relief.
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1 I declare under the penalty of perjury that the foregoing is true and correct.

2 Executed in King County, Washington on April 16, 2008.

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5 Jeffrey D. Carnevali

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CERTIFICATE OF SERVICE

I, Sharie L. Parks, hereby certify that on April 17, 2008, I caused the foregoing
**DECLARATION OF JEFFREY D. CARNEVALI IN SUPPORT OF NPI'S MOTION
FOR EXPEDITED DISCOVERY** to be served on the following parties as indicated
below:

Mark S. Parris Molly Terwilliger HELLER EHRMAN LLP 701 Fifth Avenue, Ste. 6100 Seattle, WA 98104-7098 <i>Attorneys for Defendant Gamber Johnson LLC</i>	<input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel]
David De Bruin Michael Best & Friedrich LLP 100 East Wisconsin Avenue Suite 3300 Milwaukee, WI 53202-4108 <i>Attorneys for Defendant Gamber Johnson LLC</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email [by agreement of counsel]

DATED: April 17, 2008

s/ Sharie L. Parks
for David K. Tellekson, WSBA No. 33523
Robert L. Jacobson, WSBA No. 30838
Mark P. Walters, WSBA No. 30819
DARBY & DARBY P.C.